

## REMARKS

Claims 1–12 and 14–23 are pending in the application. No amendments have been made to the claims. Allowance of the pending claims is respectfully requested.

### *Rejection of Claims 8–11 and 15 based on Non-Statutory Double Patenting*

In Section 3 of the Office Action dated May 8, 2009 (referred to hereinafter as “the Office Action”), claims 8 and 15 stand rejected based on non-statutory double patenting over claim 8 of U.S. Patent No. 6,657,980. In Section 4, claims 9–11 stand rejected because they depend from claim 8. While Applicant does not concede to the discussion in the Office Action regarding features alleged to be obvious in view of claim 8 of the cited reference, Applicant has concurrently filed terminal disclaimer to overcome this rejection.

The filing of a terminal disclaimer or offer to file a terminal disclaimer in this case does not constitute an admission of the propriety of the obviousness-type double patenting rejection. See MPEP § 804.02 and *Quad Environmental Technologies Corp. v. Union Sanitary District*, 946 F.2d 870, 20 USPQ2d 1392 (Fed. Cir. 1991).

In view of the foregoing remarks, Applicant submits that the rejection of claims 8 and 15 based on non-statutory double patenting should be overcome. Since claims 9–11 depend from claim 8, the rejection of claims 9–11 should also be overcome. Applicant therefore respectfully requests withdrawal of this rejection.

### *Allowable Subject Matter*

Applicant notes with appreciation that claims 1–7, 14, and 16–23 are indicated as being allowable.


### CONCLUSION

In view of the foregoing, Applicants respectfully submit that all pending claims in the present application are in a condition for allowance, which is earnestly solicited. Should any issues remain unresolved, the Examiner is cordially invited to telephone the undersigned at the number provided below.

The Commissioner is authorized to charge any fees or overpayments that may be due with this response to Deposit Account No. 17-0026.

Respectfully submitted,

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